

ORDER NO. 579

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Tony L. Hammond, Vice Chairman;  
Mark Acton;  
Dan G. Blair; and  
Nanci E. Langley

Competitive Product Prices  
Inbound International Expedited Services 4  
Bilateral Negotiated Service Agreement

Docket No. MC2010-37

Competitive Product Prices  
Inbound International Expedited Services 4  
Canada Post Bilateral Agreement

Docket No. CP2010-126

ORDER ADDING INBOUND INTERNATIONAL EXPEDITED  
SERVICES 4 TO THE COMPETITIVE PRODUCT LIST

(Issued November 5, 2010)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Inbound International Expedited Services 4 to the competitive product list.<sup>1</sup> For the reasons discussed below, the Commission approves the Request.

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<sup>1</sup> Request to Add Inbound International Expedited Services 4 to the Competitive Product List, and Notice of United States Postal Service of Filing Canada Post–United States Postal Service Contractual Bilateral Agreement (Under Seal), September 30, 2010 (Request).

## II. BACKGROUND

On September 30, 2010, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Inbound International Expedited Services 4 to the competitive product list. The Postal Service asserts that Inbound International Expedited Services 4 is a competitive product within the meaning of 39 U.S.C. 3632(b)(3).

The Postal Service contemporaneously filed notice pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5 that new rates for inbound Express Mail Service (EMS) from Canada will become effective January 1, 2011, as provided in the Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Bilateral Agreement), which governs bilateral rates for EMS with Canada Post Corporation (Canada Post), the postal operator in Canada. *Id.* at 1. It notes that prices and classifications “not of general applicability” for negotiated service agreements concerning Inbound International Expedited Services have been previously established in Governors’ Decision No. 08-5.<sup>2</sup> Request at 3. The Postal Service states the rates authorized by the Governors are an exception to those offered through the Universal Postal Union (UPU) EMS Cooperative. *Id.*

*Canada Post–United States Postal Service Bilateral Agreement.* The Bilateral Agreement added to the competitive product list by Order No. 376<sup>3</sup> covers parcels arriving in the United States by surface transportation and Xpresspost, a Canadian service for documents, packets, and light-weight packages. See Governors’ Decision

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<sup>2</sup> Decision of the Governors of the United States Postal Service on the Inbound Price of Services Offered Under Express Mail International (EMS) Bilateral/Multilateral Agreements, April 1, 2008 (Governors’ Decision No. 08-5). Governors’ Decision No. 08-5 established prices for the inbound services offered under Express Mail International bilateral/multilateral agreements.

<sup>3</sup> Docket Nos. MC2010-14 and CP2010-13, Order Concerning Bilateral Agreement with Canada Post for Inbound Competitive Services, December 30, 2009 (Order No. 376).

No. 09-16.<sup>4</sup> Under the Bilateral Agreement, Canada Post may tender surface parcels and Xpresspost to the Postal Service at negotiated prices rather than the default prices established through the UPU. The Bilateral Agreement establishes rates for 2010 and 2011. Request at 4-5.

On August 23, 2010, a classification change concerning the Bilateral Agreement became effective.<sup>5</sup> The effect of this change is that inbound surface parcels tendered by Canada Post are now handled as Priority Mail and subject to the rates for Xpresspost merchandise established in the Bilateral Agreement. Additionally, for the period August 23, 2010 through December 31, 2010, a small volume of residual Xpresspost items would continue to be rated and handled as Xpresspost under the Bilateral Agreement.<sup>6</sup>

The classification change was prompted by Canada Post's decision to no longer dispatch parcels, referred to as Expedited Parcels, for entry into the Postal Service's Parcel Post network. Consequently, the service for Expedited Parcels is now provided at existing negotiated rates for Xpresspost in lieu of the negotiated surface parcel post rates. Xpresspost items are rated and handled as Express Mail with Canada as a Tier 1 country in the EMS country listing beginning August 23, 2010. In its Notice, the Postal Service stated, "assuming that the rates charged to Canada Post for EMS-rated items are not the same as other rates charged to other countries, then before the end of

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<sup>4</sup> Docket Nos. MC2010-14 and CP2010-13, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services, November 18, 2009 (Governors' Decision No. 09-16). See also Docket Nos. MC2010-14 and CP2010-13, Request of United States Postal Service to Add Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling Governors' Decision and Agreement, November 25, 2009. The agreement became effective January 1, 2010 and is scheduled to expire December 31, 2011, unless terminated earlier by either party on 90 days' prior notice. *Id.*, Attachment 3.

<sup>5</sup> Docket No. MC2010-33, Order No. 522, Order Accepting Minor Classification Changes Related to Canada Post–United States Postal Service Contractual Bilateral Agreement, August 20, 2010 (Order No. 522).

<sup>6</sup> The Postal Service indicates the treatment of residual Xpresspost items is necessary to accommodate the use of existing Xpresspost mailing labels through the end of CY 2010.

calendar year 2010, the Postal Service will accordingly initiate a separate, combined mail classification and competitive price change proceeding to give effect to the calendar year 2011 rates for Xpresspost handled in the EMS network.”<sup>7</sup> The Postal Service’s instant Request represents the subsequent filing to give effect to CY 2011 rates for Xpresspost handled in the EMS network.

*Request.* In support of its Request, the Postal Service filed the following materials:

- Attachment 1—an application for non-public treatment of pricing and supporting documents filed under seal;
- Attachment 2—a redacted version of Governors’ Decision No. 08-5 establishing prices and classifications for services offered under EMS bilateral/multilateral agreements; Mail Classification Schedule (MCS) language applicable to Inbound EMS bilateral/multilateral agreements; formulas for inbound prices under EMS bilateral/multilateral agreements; and an analysis of the formulas, certification of the Governors’ vote, and certification of compliance with 39 U.S.C. 3633(3)(a);
- Attachment 3—a redacted version of the portion of the Bilateral Agreement pertinent to the filing;
- Attachment 4—certification of prices for the Bilateral Agreement required by 39 CFR 3015.5(c)(2);
- Attachment 5—a Statement of Supporting Justification as required by 39 CFR 3020.32; and
- Attachment 6—proposed MCS language describing Inbound International Expedited Services 4.

In the Statement of Supporting Justification, Lea Emerson, Executive Director, International Postal Affairs, asserts that “[t]he addition of the relevant portions of [the Bilateral Agreement] as a competitive product will enable the Commission to verify that each contract covers its attributable costs and enables competitive products, as a whole, to make a positive contribution to coverage of institutional costs.” Request,

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<sup>7</sup> Docket No. MC2010-33, Notice of United States Postal Service of Proposed Minor Classification Change Concerning Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services, August 2, 2010, at 6.

Attachment 5, at 2. She further states that as a result, “no issue of subsidization of competitive products by market dominant products arises.” *Id.*

The Postal Service filed much of the supporting materials, including the specific Bilateral Agreement, under seal. *Id.* at 5. In its Request, the Postal Service maintains that certain portions of the contract, the rates, descriptions of the rates, and related financial information should remain under seal. *Id.*, Attachment 1.

In Order No. 553, the Commission gave notice of the two dockets, appointed a Public Representative, and provided the public with an opportunity to comment.<sup>8</sup>

### III. COMMENTS

Comments were filed by the Public Representative.<sup>9</sup> No other interested person submitted comments. The Public Representative states that the calendar year 2011 inbound EMS rates in the Bilateral Agreement are supported by Governors’ Decision No. 08-5. *Id.* at 1. He finds that the proposed Bilateral Agreement appears to comport with applicable Commission rules and the rates as established comply with the requirements of 39 U.S.C. 3633(a). *Id.* at 2.

The Public Representative states that the rates in the Bilateral Agreement should not lead to the subsidization of competitive products by market dominant products, should cover their attributable costs, and should have a positive net contribution to institutional costs. *Id.* at 2-3. He notes that the Postal Service has provided both adequate justification for maintaining confidentiality and sufficient supporting documentation for its request. *Id.* The Public Representative concludes that, based on his review of the supporting data under seal, the Bilateral Agreement comports with the

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<sup>8</sup> Notice and Order Concerning Adding Inbound International Expedited Services 4 to the Competitive Product List and Canada–Post Bilateral Agreement, October 4, 2010 (Order No. 553).

<sup>9</sup> Public Representative Comments in Response to United States Postal Service Request to Add Inbound International Expedited Services 4 to the Competitive Product List and Canada Post–United States Postal Service Bilateral Agreement, October 14, 2010 (Public Representative Comments).

provisions of title 39 and offers negotiated pricing, dispatch methods, and other negotiated provisions favorable both to the Postal Service and general public. *Id.* at 3.

#### IV. COMMISSION ANALYSIS

The Commission has reviewed the revised negotiated rates for inbound EMS from Canada for CY 2011 in the instant Bilateral Agreement, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

*Statutory requirements.* Because the Commission has already approved the Bilateral Agreement in Docket Nos. MC2010-14 and CP2010-13, which governs the bilateral rates for EMS with Canada, review is limited in the instant case to determining statutory compliance and classification assignment for the new CY 2011 rates for Xpresspost handled in the EMS network as contained in the revised agreement filed in this Request. The new rates modify the Bilateral Agreement filed in Docket Nos. MC2010-14 and CP2010-13 and would apply to the new product, Inbound International Expedited Services 4, that the Postal Service seeks to add to the competitive product list. Therefore, the Commission's statutory responsibilities entail, first, ensuring that the new product is assigned to the appropriate product list, and second, that the rates comply with title 39. The latter includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

*Product list assignment.* In determining whether to assign the new product to the market dominant product list or the competitive product list, the Commission must consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns.

39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment 5, ¶ (d). It also contends that it may not decrease quality or output without risking the loss of business to large competitors that offer similar expedited delivery services. *Id.* The Postal Service states that the Bilateral Agreement prices provide sufficient incentive for Canada Post and its customers to tender EMS volume to the Postal Service rather than a competitor. The Postal Service further states that raising its prices could risk losing its Canada Post volume to a private competitor in the international shipping industry. *Id.*

The Postal Service indicates that the Bilateral Agreement, which concerns the exchange of EMS at negotiated prices between the Postal Service and Canada Post, has been classified as competitive because of its exclusion from the letter monopoly and the level of competition in the relevant market. *Id.* It contends that even if the EMS tendered under the Bilateral Agreement might contain “letters” as defined in postal regulations, the EMS items at issue in the agreement fall outside the Private Express Statutes because all prices paid by Canada Post exceed at least six times the rate for the first ounce of a First-Class Mail letter. *Id.*, ¶ (e).

Additionally, the Postal Service states that private consolidators, freight forwarders, and integrators offer international shipping services using EMS. It notes that delivery of EMS in the domestic service area of the United States requires a substantial infrastructure to support a national network and as a result large carriers serve this market. *Id.*, ¶ (f). The Postal Service states that it has no specific data on Canada Post’s or its customers’ views on the regulatory classification of this agreement.

*Id.*, ¶ (g). However, it contends Canada Post and its end users find this type of product satisfactory since they have a choice of competitors providing similar services. *Id.* Finally, the Postal Service asserts that the market for expedited delivery services is highly competitive, and the Bilateral Agreement should not have a significant impact on small businesses. It states that the Bilateral Agreement provides a benefit to Canada Post's and the Postal Service's small businesses by providing additional options for shipping articles between the United States and Canada. *Id.*, ¶ (h).

No commenter opposes the proposed classification of Inbound International Expedited Services 4 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that the new product is appropriately classified as a competitive product and should be added to the competitive product list.

*Cost considerations.* The Postal Service presents a financial analysis showing that the CY 2011 rates for inbound EMS in the Bilateral Agreement cover their attributable costs, do not result in subsidization of competitive products by market dominant products, and increase the contribution from competitive products.

Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *Id.*, Attachment 4. He asserts that the prices for the Bilateral Agreement "should cover its attributable costs and preclude the subsidization of competitive products by market dominant products." *Id.*

Based on the data submitted, the Commission finds that CY 2011 rates for inbound EMS in the instant Bilateral Agreement should cover their attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed CY 2011 rates for inbound EMS in the instant Bilateral



Agreement indicates that they comport with the provisions applicable to rates for competitive products.

*Other considerations.* Given that the negotiated rates for CY 2011 in the instant Bilateral Agreement are different from the EMS rates received from other countries, the Commission is in agreement that the new product should be designated as Inbound International Expedited Services 4. The Commission has adhered to this practice in other proceedings with products that exhibit sufficient distinctions from the original agreement to warrant classification as a new product.<sup>10</sup>

The CY 2011 rates for inbound EMS from Canada Post in the Bilateral Agreement are scheduled to become effective January 1, 2011 and remain in effect until December 31, 2011. Request at 1, 5. The Postal Service shall promptly notify the Commission if the instant Bilateral Agreement terminates earlier than the proposed term. The Commission will then remove the instant Bilateral Agreement from the competitive product list.

In conclusion, the Commission approves International Expedited Services 4 as a new product. The revision to the competitive product list is shown below the signature of this Order and is effective upon issuance of this Order.

## V. ORDERING PARAGRAPHS

*It is Ordered:*

1. International Expedited Services 4 (MC2010-37 and CP2010-126) Canada Post-United States Postal Service Contractual Bilateral Agreement, Inbound EMS from Canada, is added to the competitive product list as a new product under Inbound International Mail Expedited Services, as discussed in this Order.

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<sup>10</sup> See Docket Nos. MC2010-13 and CP2010-12, Order Adding Inbound International Expedited Services 3 to the Competitive Product List, December 22, 2009. See *also* Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009.

2. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date as set forth in the body of this Order.
3. The Secretary shall arrange for the publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove  
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2010-37 and CP2010-126. The Commission uses two main conventions when making changes to the product lists. The addition of text is indicated by underscoring. Deleted text is indicated by a strikethrough.

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## Part B—Competitive Products

### 2000 Competitive Product List

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### Inbound International Expedited Services

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#### Inbound International Expedited Services 4 (MC2010-37 and CP2010-126)